

(Caption of Case)

IN RE:

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Richard L. Whitt  
Address: Austin & Rogers, P.A.  
508 Hampton Street, Suite 300  
Columbia, South Carolina 29201

SC Bar Number: 62895  
Telephone: 803-251-7442  
Fax: 803-252-3679  
Other: 803-256-4000  
Email: rlwhitt@alrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

Other: Routine

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input checked="" type="checkbox"/> Return	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

**Austin & Rogers, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

WILLIAM FREDERICK AUSTIN  
TIMOTHY F. ROGERS  
RAYMON E. LARK, JR.  
RICHARD L. WHITT  
JEFFERSON D. GRIFFITH, III\*  
EDWARD L. EUBANKS  
W. MICHAEL DUNCAN

COLUMBIA OFFICE:  
CONGAREE BUILDING  
508 HAMPTON STREET, SUITE 300  
POST OFFICE BOX 11716  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 256-4000  
FACSIMILE: (803) 252-3679  
WWW.ALRLAW.COM

WINNSBORO OFFICE:  
120 NORTH CONGRESS STREET  
POST OFFICE BOX 1061  
WINNSBORO, SOUTH CAROLINA 29180  
TELEPHONE: (803) 712-9900  
FACSIMILE: (803) 712-9901

\* ALSO MEMBER NORTH CAROLINA BAR  
+ ALSO MEMBER VIRGINIA BAR

November 24, 2008

**VIA ELECTRONIC FILING**

The Honorable Charles L. A. Terreni  
Chief Clerk and Administrator  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE:     • Happy Rabbit, LP on Behalf of, Windridge Townhomes, Complainant, v. Alpine  
          Utilities, Inc., Respondent  
          • Docket No. 2008-360- S  
          • **Return to Motion**

Dear Mr. Terreni:

Enclosed for filing please find Happy Rabbit, LP, Complainant's Return to Motion in the above referenced Docket.

Counsel for Alpine Utilities, Inc. and Counsel for the South Carolina Office of Regulatory Staff are being served with a copy of this correspondence and Return to Motion.

Sincerely,  
/S/  
Richard Whitt

RLW/kjw

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2008-360-S**

IN RE: )  
Happy Rabbit, LP on Behalf of, )  
Windridge Townhomes, ) **RETURN TO MOTION**  
)  
Complainant, )  
v. )  
)  
Alpine Utilities, Inc., )  
Respondent )  
)

## INTRODUCTION

Respondent, Alpine Utilities, Inc. (hereinafter “Alpine”) filed an Answer and Motion to Dismiss on October 24<sup>th</sup>, 2008. Counsel for Happy Rabbit, LP (hereinafter “Happy Rabbit”) filed a Notice of Appearance on October 29<sup>th</sup>, 2008. The Public Service Commission of South Carolina (hereinafter “PSCSC” or “Commission”) issued its Directive Order on November 12<sup>th</sup>, 2008 allowing Counsel for Happy Rabbit additional time, until November 28<sup>th</sup>, 2008, to respond to Alpine’s filing. Happy Rabbit’s Return follows:

**UNAUTHORIZED PRACTICE OF LAW**

1. James C. Cook, a general partner of Happy Rabbit, a South Carolina Limited Partnership, denies that he has engaged in the unauthorized practice of law under the facts of the mailing of the correspondence notifying the PSCSC of a Claim. Mr. Cook simply wrote correspondence to the PSCSC informing the Commission of his complaint, identifying himself as a General Partner (not an attorney) and requesting a hearing.

2. Furthermore, Happy Rabbit has retained the undersigned, a member of the South Carolina Bar, to represent Happy Rabbit in this matter.

### **CIRCUIT COURT PROCEEDING**

3. Happy Rabbit has Civil Action No. 2008-CP-40-06619 pending in Richland County Circuit Court. That Action seeks monetary damages and, *inter alia*, alleges a violation of the South Carolina Unfair Trade Practices Act (§ 39-5-10 *et seq.*, S.C. Code of Laws Ann., (1976, As Amended)).

4. It is axiomatic that the PSCSC may not award monetary damages and enforce statutes completely unrelated to its jurisdiction. Because monetary damages are sought and a violation of the South Carolina Unfair Trade Practices Act is alleged, that request for monetary damages and that cause of action are properly before the Circuit Court and those matters may not be heard by the PSCSC.

5. Therefore, it is clear that, while the Circuit Court properly has jurisdiction over Happy Rabbit's monetary claim and Unfair Trade Practice claim, this tribunal has jurisdiction over the business relationship between a utility [Alpine] and its customer [Windridge], pursuant to § 58-5-210.

### **RR. 103-819 AND 824 AND § 58-5-270**

6. Windridge filed correspondence sufficient to set forth a concise and cogent statement of the facts of its complaint and the relief sought. See the following from Windridges's complaint wherein Windridge requests the PSCSC to (i) inquire into this matter, (ii) schedule a formal hearing and (iii) address Happy Rabbit's [Windridge] concerns that Alpine improperly established and maintained a utility relationship with Windridge. In fact, that is a concise and cogent statement of the facts of the Complaint.

7. Those allegations, taken from Windrige's correspondence, satisfy the requirements of the PSCSC's rules and regulations and are sufficient to set forth a claim against Alpine.

### **FRIVOLOUS PROCEEDING**

8. Happy Rabbit denies that, under the facts of this complaint, that its actions are frivolous.

9. Notwithstanding the monetary claim and Unfair Trade Practice Act violation claimed and discussed in more detail hereinabove, the PSCSC is the correct tribunal, under § 58-5-210, S.C. Code of Laws Ann., (1976, As Amended), to decide the proper utility and customer business relationship to be maintained in the future with tenants at the Windridge Townhomes. Windridge Townhomes has approximately forty-six tenants that will be affected by the PSCSC's decision, in that each will be establishing a utility account directly with Alpine, subject only to the jurisdiction of the PSCSC.

### **ESTABLISHMENT OF AN ESCROW ACCOUNT**

10. Alpine makes reference to Happy Rabbit's claim that it was establishing an escrow account to utilize while its complaint was pending before the PSCSC.

11. Although not required to do so, Happy Rabbit maintains such escrow account at Carolina First Bank, in the interest of showing the good faith of its actions in withholding payment from Alpine.

### **MORE DEFINITE STATEMENT**

12. It is uncontroverted that this Commission has jurisdiction to decide matters under Title 58, specifically § 58-5-210. In order to decide this matter under Title 58, this Commission should acknowledge and/or take judicial notice of § 27-33-50. In

light of that obligation, Happy Rabbit makes reference to the facts below and to code section 27-33-50, as a partial basis for both its Circuit Court action and this Complaint:

I. Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) and has been so since December 29, 2005, until the date of these presents. Prior to that date, ownership of Windridge was with Plaintiff Cook, namely through December 28, 2005.

II. Plaintiff Cook and later Plaintiff Happy Rabbit, entered into a utility customer relationship with Alpine for the provision of sewer services to Windridge. The utility required Plaintiff Cook and continues to require Plaintiff Happy Rabbit to enter into a business relationship, whereby Plaintiff was responsible for payment of monthly sewer bills for the forty-six tenancies in the twenty-three duplex apartment buildings. Furthermore, Plaintiff paid a definite monetary sum to Respondent Alpine on a monthly basis for a period exceeding three years, and therefore Plaintiffs' damages are ascertainable.

III. Alpine insisted and continues to insist that Complainant be responsible for the sewer accounts for all tenants located in Windridge. Complainant protested that such an arrangement was improper, but Alpine refused to change the character of sewer services to Windridge and required and continues to require Complainant to be responsible for the same. Respondent Alpine's actions, in requiring Complainant to be responsible for its tenant's sewer services were unfair and deceptive.

IV. (§ 27-33-50, S.C. CODE OF LAWS ANN.,(1976, AS AMENDED)) Reads in pertinent part as follows:

Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.

V. Respondent Alpine's actions, in requiring the Complainant to be responsible for the sewer services of their forty-six tenancies (twenty-three duplex buildings), is in direct contravention of § 27-33-50, S.C. CODE OF LAWS ANN., (1976, AS AMENDED) and affected trade and commerce within the state of South Carolina.

13. Mr. Cook, as General Partner of Happy Rabbit, contacted Alpine's attorney, John Hoefer, and notified him of the requirements of § 27-33-50 and asked him to secure Alpine's compliance with South Carolina Law. Mr. Hoefer, promised to follow up with his client and contact Mr. Cook, but failed to keep that commitment. Mr. Cook had previously requested on several occasions that representatives of Alpine comply with the requirements of § 27-33-50, but was unsuccessful in his request.

14. Complainant's Complaint is simply based on the fact that Alpine improperly established and maintained its utility relationship with Windridge. However, paragraph 12 provides a more factual basis for the Complaint.

15. Happy Rabbit's correspondence of September 15, 2008 is incorporated herein by reference and together with this Return to Motion, they comprise Happy Rabbit's Complaint against Alpine.

### CONCLUSION

Based on the foregoing, the facts of this case, §§ 27-33-50, 58-50-210 S.C. CODE OF LAWS ANN., (1976, AS AMENDED) and the pleadings of this case, this Commission should inquire into this matter and find that Alpine has improperly established and maintained its utility relationship with Windridge and order Alpine to establish separate sewer utility accounts for each of the tenants of Windridge Townhomes and for such other and further relief as this Commission may deem just and appropriate.

Respectfully Submitted,

/S/

Richard L. Whitt

**AUSTIN & ROGERS, P.A.**

Columbia, SC  
November 24, 2008

508 Hampton Street, Suite 300  
Columbia South Carolina, 29201  
803-251-7442

Attorney for Happy Rabbit, a South  
Carolina Limited Partnership,  
owners and operators of Windridge  
Town Homes.